

U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREW VAN ETSEN, on behalf of
himself and all others similarly situated,

Plaintiffs,

-v-

MITSUI & COMPANY (U.S.A.), INC., *et al.*,

Defendants.

No. 09 Civ. 1071 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of the parties' joint submission dated May 4, 2009, pertaining to the issue of bifurcation of discovery in the above-captioned matter.

Having reviewed the submission as well as Plaintiffs' discovery requests, the Court finds that discovery relating to Plaintiff Van Etten's individual claims and his adequacy as a class representative should proceed before class discovery begins.

Although Plaintiff Van Etten claims that the "information sought by [his] discovery requests is clearly focused solely on satisfying the numerosity, typicality and commonality requirements of Rule 23(a) and do not represent an undue burden on Defendant" Mitsui USA, a review of the proposed discovery requests indicates otherwise. Further, Defendant Mitsui Japan has yet to be served at this time, and likely will not be served until at least June. Because Plaintiff Van Etten is the only named plaintiff in this purported class action, and because there appear to be serious questions as to his adequacy to serve as class representative, the Court finds it appropriate to bifurcate discovery and to proceed only on discovery into Plaintiff Van Etten's individual claims at

this time. *See, e.g., Jacobsen v. The Stop & Shop Supermarket Co.*, No. 02 Civ. 5915 (DLC), 2004 WL 1918795, at *1 (S.D.N.Y. Aug. 27, 2004).

The Court will refer the matter to the Honorable Kevin N. Fox, Magistrate Judge, to determine the appropriate parameters of the first phase of discovery.

SO ORDERED.

DATED: May 11, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE